No. 14624

United States
Court of Appeals
for the Ninth Circuit.

NEW YORK LIFE INSURANCE COMPANY, a Corporation,

Appellant,

vs.

ARTHUR L. LEE and FLORENCE GRUSENMEYER, Formerly Florence Lee,

Appellees.

Transcript of Record

Appeal from the United States District Court for the District of Oregon

FILED
MAR 10 1955
PAUL P. O'BRIEN,
CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—2-18-55

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Appellees.

In the United States District Court
for the District of Oregon

Civil No. 7070

NEW YORK LIFE INSURANCE COMPANY, a Corporation,

Plaintiff,

vs.

ARTHUR L. LEE, FLORENCE GRUSENMEYER, Formerly FLORENCE LEE, and ISABEL CLARK,

Defendants.

COMPLAINT FOR INTERPLEADER

Comes now the plaintiff and for its complaint in interpleader alleges as follows:

I.

Plaintiff is a corporation organized and exisiting under and by virtue of the laws of the State of New York.

II.

The defendant, Arthur L. Lee, resides in and is a citizen of the State of Oregon; the defendant, Florence Grusenmeyer, formerly Florence Lee, resides in and is a citizen of the State of California, and the defendant, Isabel Clark, resides in and is a citizen of the State of Oregon.

III.

The matter in controversy, exclusive of interest and costs, exceed the sum of $500.00.

IV.

Jurisdiction of this Court exists by virtue of the foregoing diversity of citizenship and by the amount in controversy (Sections 1332 (a) (1), 1335; Title 28 USC).

V.

Commencing on or about November 6, 1915, the defendant, Arthur L. Lee, was insured under a contract of life insurance issued by plaintiff and identified as Policy No. 4-860-276.

VI.

On or about July 31, 1926, defendant, Arthur L. Lee, and the defendant, Florence Grusenmeyer, formerly Florence Lee, were married.

VII.

Thereafter and on or about September 22, 1926, in compliance with the request of the defendant, Arthur L. Lee, the beneficiary under said contract of insurance was changed and the defendant, Florence Grusenmeyer, formerly Florence Lee, the then wife of the defendant, Arthur L. Lee, became the beneficiary under said contract of insurance.

VIII.

During the existence of the marriage relationship of the defendants herein, the defendants resided in the State of California.

IX.

Thereafter the defendants were divorced, but the defendant, Florence Grusenmeyer, formerly Flor-

ence Lee, continued to claim some right, title and interest in said contract of insurance.

X.

Plaintiff is informed and believes and therefore alleges that the claim of the defendant, Florence Grusenmeyer, is predicated upon the fact that she was at one time the wife of the defendant, Arthur L. Lee, and on the ground that the designation of her as beneficiary was irrevocable and the further ground that she has a community interest in the contract of insurance because some of the premiums thereon were paid with funds which were earnings of the marital community in the State of California.

XI.

On or about the first day of December, 1952, the defendant, Arthur L. Lee, demanded the cash surrender value of said policy which demand was refused by plaintiff because the defendant, Arthur L. Lee, failed to comply with the terms of said contract in that he failed to surrender the policy at that time and for the further reason that the defendant, Florence Grusenmeyer, was claiming an interest in said policy and did not join in the demand of the defendant, Arthur L. Lee.

XII.

On or about the 4th day of May, 1953, the defendant, Arthur L. Lee, commenced an action against plaintiff in the Circuit Court of the State of Oregon and the County of Multnomah, wherein defendant, Arthur L. Lee, demanded judgment for

the cash surrender value of said policy, which said action is now pending.

XIII.

On or about March 1, 1945, the defendant, Arthur L. Lee, designated the defendant, Isabel Clark, as the beneficiary of said policy and defendant, Isabel Clark, is presently the beneficiary of said policy.

XIV.

Plaintiff is informed and believes and therefore alleges that the claim of the defendant, Isabel Clark, is predicated upon the fact that she is the present beneficiary under said policy, and upon the claim that said policy is presently a paid up policy and that defendant, Arthur L. Lee, is not now entitled to the cash surrender value of said policy.

XV.

Each of the defendants, Arthur L. Lee and Florence Grusenmeyer, has claimed that he or she is the only person entitled to receive payment of the proceeds of $1,711.25, the cash surrender value of said policy, and the defendant, Isabel Clark, claims some right, title and interest in said policy.

XVI.

Plaintiff stands indifferent as to the respective claims of the defendants hereinabove set forth, and since the demand for the cash surrender value of said policy by said defendant, Arthur L. Lee, has been a mere stakeholder of said proceeds in the sum of $1,711.25, in which plaintiff claims no beneficial interest; but in view from the conflicting claims of

said defendants, plaintiff cannot determine without hazards to itself to which of said defendants and in what amount said proceeds should be paid.

XVII.

Plaintiff has deposited in the registry of this Court, simultaneously with the filing of this complaint the sum of $1,711.25, being the proceeds payable under said contract of insurance, and to abide the judgment of this Court as to which of said defendants and in what amounts the same is to be paid.

Wherefore, plaintiff prays that the Court adjudge:

1. That the defendant, Arthur L. Lee, be restrained from prosecuting the action now pending against plaintiff in the Circuit Court of the State of Oregon for the County of Multnomah, until this cause is finally adjudicated.

2. That the defendant, Florence Grusenmeyer, be restrained from instituting any action against plaintiff for the recovery of the proceeds of said contract of insurance or any part thereof.

3. That the defendant, Isabel Clark, be restrained from instituting any action against plaintiff for the recovery of the proceeds of said contract of insurance or any part thereof.

4. That the defendants be required to interplead and settle among themselves their respective claims to said proceeds.

5. That plaintiff be discharged from all liability in the premises.

6. That the plaintiff have and recover its costs and disbursements herein incurred and a reasonable attorney's fee out of said sum of money deposited in the registry of this Court.

DAVIS, JENSEN & MARTIN,

By /s/ DONALD W. McEWEN,
Of Attorneys for Plaintiff.

[Endorsed]: Filed July 14, 1953.

[Title of District Court and Cause.]

ANSWER OF DEFENDANT ARTHUR L. LEE

Comes now Arthur L. Lee, one of the defendants in the above-entitled action, and for his answer to plaintiff's complaint on file herein, admits, denies and alleges as follows:

I.

Admits the allegations contained in Paragraph I of said complaint.

II.

Answering Paragraph II, admits that Arthur L. Lee and Isabel Clark are residents and citizens of the State of Oregon; that this answering defendant has no knowledge or information sufficient to form a belief as to the truth or falsity of the other allegations, things or matters contained in said Paragraph II and therefore denies the same.

III.

Admits the allegations contained in Paragraphs III, IV and V.

IV.

Denies the allegations, things and matters contained in Paragraphs VI, VII, VIII, IX and X and the whole thereof, except as hereinafter expressly admitted or qualified.

V.

Admits that on or about the 1st day of December, 1952, this answering defendant demanded the cash surrender value of said policy from the plaintiff and said demand was refused and denies each and every other allegation, thing and matter contained in Paragraph XI and the whole thereof, except as hereinafter expressly admitted or qualified.

VI.

Admits the allegations contained in Paragraph XII and alleges that in addition to said cash surrender value of $1,711.25, this answering defendant, as plaintiff in said action pending in the Circuit Court of the State of Oregon, County of Multnomah, has demanded judgment against the plaintiff herein, as defendant therein, interest at the rate of 6% per annum on said sum from December 18, 1952, together with the further sum of $1,750.00 as reasonable attorneys' fees.

VII.

Admits the allegations contained in Paragraph XIII.

VIII.

Denies the allegations in Paragraph XIV and alleges that the defendant, Isabel Clark has and does assert no claim against the plaintiff herein for said policy or the proceeds thereof.

IX.

Answering the allegations contained in Paragraph XV, admits that this answering defendant, Arthur L. Lee, claims that he is the only person entitled to receive payment of the cash surrender value of said policy and denies each and every other allegation, thing and matter contained therein and the whole thereof.

X.

Denies each and every allegation, thing and matter contained in Paragraph XVI and the whole thereof.

And for a Further Affirmative Answer, Defense and Counterclaim This Answering Defendant Alleges:

I.

That the plaintiff is a corporation, organized and existing under and by virtue of the laws of the State of New York and is engaged in the business of writing insurance.

II.

That on or about the 16th day of November, 1915, the plaintiff and this answering defendant agreed that for and in consideration of payments or premiums made and to be made in the future by this

answering defendant that the plaintiff would, upon this answering defendant's death, pay to any beneficiary designated by him the sum of $3,000.00; that the parties thereto further agreed that this answering defendant should and did have the right to change such beneficiary and that such right was without reservation or qualification, and that this answering defendant might, without the consent of any beneficiary, receive every benefit, exercise every right and enjoy every privilege conferred upon this answering defendant under the terms of said policy. That said agreement was incorporated in and represented by a policy of insurance issued by the plaintiff to this answering defendant, being plaintiff's policy No. 4-860-276.

III.

That the parties to said policy agreed and said policy provides in part as follows:

"Benefits on Surrender or Lapse—After two full annual premiums shall have been paid, the Insured (defendant) may within three months after any default in payment of premium, but not later, surrender the policy, and,

"(a) Receive the Cash Surrender Value less any indebtedness to the Company thereon. The cash Surrender Value shall be the reserve of this Policy, at the date of default (omitting fractions of a dollar per thousand of insurance) and the reserve on any Paid-up Additions thereto, and any dividends standing to the credit of this Policy, less a surrender charge which in no case shall be more than one and one-half per centum of the sum insured. After

premiums have been paid for ten years or more there will be no surrender charge. The reserve will be computed according to the American Table of Mortality and interest at the rate of three per centum per annum * * *"

IV.

That this answering defendant entered into performance of said contract and made all payments and performed all terms, conditions and covenants by him to be performed under and by virtue of the terms of said policy.

V.

That on or about the 31st day of July, 1926, this answering defendant went through a marriage ceremony with the defendant presently known as Florence Grusenmeyer; that the said Florence Grusenmeyer was then and there unable and incapable of entering a valid contract of marriage for the reason that the said Florence Grusenmeyer, at said time, had a husband then living; that on or about the 22nd day of September, 1926, this answering defendant being then and there under the belief that the said Florence Grusenmeyer was his legal wife, requested the plaintiff herein to change the beneficiary to the said Florence Grusenmeyer, then known as Florence Lee.

VI.

That thereafter and on or about the 27th day of May, 1932, upon the request of this answering defendant, the plaintiff changed the beneficiary on

said policy from Florence Lee, designated as wife of defendant, to Reetha M. Shelly, friend; that on or about the 21st day of December, 1932, the said Florence Grusenmeyer, then known as Florence Lee, communicated with the plaintiff herein stating in substance that she did not consent to any transaction concerning said policy changing its terms or the beneficiary thereof.

VII.

Thereafter this answering defendant commenced a suit in the State of Oregon for the County of Multnomah, against the said defendant Florence Grusenmeyer, then known as Florence Lee, praying that the purported marriage between the parties should be declared null and void. That thereafter and on or about the 25th day of January, 1934, a decree was entered in said suit declaring the purported marriage, between this answering defendant and the said Florence Grusenmeyer, then known as Florence Lee, was a mere nullity and had no binding affect on either party and that the same was declared null and void ab initio.

VIII.

That thereafter and on or about the 27th day of June, 1937, with full knowledge of the alleged claim to said policy and the proceeds thereof by the said Florence Grusenmeyer, the plaintiff at the request of this defendant changed the beneficiary of said policy to Isabel Clark; that by such action the plaintiff herein waived any claimed rights it might have to refuse performance of the terms of

said contract because of any purported claim of the said defendant, Florence Grusenmeyer. That as the plaintiff well knew and knows, the said Florence Grusenmeyer at no time has had any right to the proceeds of said policy under and by virtue of its terms, or otherwise and that the alleged claim of the said Florence Grusenmeyer was and is without foundation in law or in fact. That this defendant furnished to the plaintiff documentary evidence establishing the facts concerning his marital status.

IX.

That subsequently, as hereinabove admitted and alleged, this answering defendant demanded the cash surrender value of said policy, which demand was refused by the plaintiff. That by its acts and conduct in so refusing to comply with the terms of said policy the plaintiff herein waived any and all requirements or formalities required by said policy incidental to the cancellation thereof or payment of such cash value. That subsequent to such demand and such refusal to pay said cash surrender value by the plaintiff and upon the refusal of this answering defendant to make any further or additional payment of premiums the plaintiff herein asserted, and continued to assert that said policy of insurance had by its terms been converted into temporary or extended insurance with no cash surrender value.

X.

That thereupon this answering defendant commenced an action in the Circuit Court of the State of Oregon for the County of Multnomah, against

the plaintiff herein demanding judgment of and against the plaintiff herein for the sum of the cash surrender value, namely, $1,711.25, together with interest thereon at the rate of 6% per annum, beginning December 18, 1952, until paid, together with the further sum of $1,750.00, as reasonable attorneys' fees.

XI.

That the sum of $1,750.00 is a reasonable sum to allow this answering defendant as attorneys' fees herein.

Wherefore, this answering defendant prays that the plaintiff take nothing by virtue of its complaint and that this action be dismissed with costs to this answering defendant, or in the alternative, that this answering defendant have judgment against the plaintiff herein for the sum of $1,711.25, together with interest thereon at the rate of 6% per annum from December 18, 1952, and the further sum of $1,750.00 attorneys' fees and for his costs and disbursements incurred herein.

/s/ ELTON WATKINS,

/s/ C. X. BOLLENBACK,

Attorneys for Arthur L. Lee, Defendant.

Service of copy acknowledged.

[Endorsed]: Filed August 4, 1953.

[Title of District Court and Cause.]

ANSWER OF FLORENCE GRUSENMEYER, FORMERLY FLORENCE LEE

Now comes the defendant Florence Grusenmeyer, formerly Florence Lee, and for answer to Plaintiff's Suit on file herein, admits, alleges and denies the allegations of said plaintiff's complaint, as follows, to wit:

I.

Admits the allegations contained in Paragraphs I, II, III, IV, V, VI, VII, VIII, IX and X thereof.

II.

As to the allegations contained in Paragraph XI of Plaintiff's Complaint on file herein, this defendant has no knowledge or information relative thereto save and except that this defendant always has and does now claim an interest in the policy of life insurance which is the subject of this suit for the reasons set forth in Paragraphs VI, VII, VIII, IX and X of said Complaint, and has not and will not join in the demand of Arthur L. Lee, aforesaid.

Wherefore, defendant having fully answered, prays:

(a) That the amount in controversy, to wit: $1,711.25, be awarded to this defendant pursuant to the assignment of the contract of life insurance set forth in Paragraph VII of Plaintiff's Complaint;

(b) That this Honorable Court decree that the

proceeds of the life insurance contract which is the subject of this controversy be awarded to this defendant pursuant to the community property laws of the State of California;

(c) For such other and further relief as may be meet, just and agreeable to equity.

Dated: San Francisco, California, September 14, 1953.

/s/ FLORENCE GRUSENMEYER,
Formerly Florence Lee,
Defendant.

/s/ A. M. BROVILLET,
Attorney for Defendant,
Florence Lee.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed September 15, 1953.

[Title of District Court and Cause.]

PRE-TRIAL ORDER ON ISSUE OF INTERPLEADER

The above-entitled civil action having come on for pre-trial conference upon a segregated issue for the purpose of determining if the suit for interpleader may be maintained before the Honorable Claude McColloch, one of the Judges of this Court, plaintiff appearing by and through Theodore B. Jensen and Donald W. McEwen, of its attorneys, the defendant Arthur L. Lee appearing by and through C. X. Bollenback of his attorneys, and the defendants Florence Grusenmeyer, formerly Florence Lee, and Isabel Clark not attending said pre-trial conference. Whereupon the following proceedings were had:

Agreed Facts

The parties agreed that the following shall be accepted by the Court upon the trial as established facts and that no proof thereof shall be required:

I.

That plaintiff is a corporation, organized and existing under and by virtue of the laws of the State of New York, and the defendants Arthur L. Lee and Isabel Clark are residents of the State of Oregon.

II.

That defendant Florence Grusenmeyer, formerly Florence Lee, is a resident of the State of California.

III.

The amount involved in this controversy exceeds the sum of $500.00, exclusive of interest and costs.

IV.

That jurisdiction of this Court exists by virtue of the foregoing diversity of citizenship and by the amount in controversy (Section 1332a (1), 1335; Title 28 USC).

V.

That on or about the 16th day of November, 1915, the New York Life Insurance Company and the defendant Arthur L. Lee agreed that for and in consideration of payments or premiums made and to be made in the future by the said Arthur L. Lee, that the New York Life Insurance Company would, upon the death of the said Arthur L. Lee, pay to any beneficiary designated by him the sum of $3,000.00; that the said Arthur L. Lee and the said New York Life Insurance Company further agreed that the said Arthur L. Lee should and did have the right to change the beneficiary under such insurance agreement and that the right to change such beneficiary was without reservation or qualification; the said New York Life Insurance Company and the said Arthur L. Lee further agreed that the said Arthur L. Lee might, without the consent of any beneficiary, receive benefit, exercise every right and enjoy every privilege conferred upon the said Arthur L. Lee under the terms of said insurance agreement. That the said insurance agreement further provided as follows:

Benefits on Surrender or Lapse.—After two full annual premiums shall have been paid, the Insured may within three months after any default in payment of premium, but not later, surrender the Policy, and,

(a) Receive its Cash Surrender Value less any indebtedness to the Company hereon. The Cash Surrender Value shall be the reserve on this Policy, at the date of default (omitting fractions of a dollar per thousand of insurance) and the reserve on any Paid-up Additions thereto, and any dividends standing to the credit of this Policy, less a surrender charge which in no case shall be more than one and one-half per centum of the sum insured. After premiums have been paid for ten years or more there will be no surrender charge. The reserve will be computed according to the American Table of Mortality and interest at the rate of three per centum per annum;

VI.

That said insurance agreement was incorporated in and represented by a policy of insurance issued by the said New York Life Insurance Company to the said Arthur L. Lee, being Policy No. 4-860-276.

VII.

That prior to September 1, 1926, Florence Grusenmeyer, one of the defendants herein, was the wife of Frank E. Travers and was known as Florence Travers.

VIII.

That the said Florence Travers, now known as Florence Grusenmeyer, and the defendant Arthur L. Lee went through a marriage ceremony in the State of Nevada on the 31st day of July, 1926, and resided for some time in the State of California where community property laws exist.

IX.

That the New York Life Insurance Company Policy No. 4-860-276, in the name of Arthur L. Lee as insured had a net cash value on the 31st day of July, 1926, of $208.23. At said time a loan of $100.00 on said policy had been made to Arthur L. Lee.

X.

That a final decree of divorce in a suit then pending between the said Florence Travers and Frank E. Travers, in the Superior Court of the State of California for the County of Los Angeles, Dept. 3, Case No. D34430, was granted September 1, 1926, and entered of record September 3, 1926.

XI.

That on the 22nd day of September, 1926, Arthur L. Lee requested the New York Life Insurance Company to change the beneficiary to the said Florence Lee.

XII.

That thereafter and on or about the 27th day of May, 1932, upon the request of the said Arthur L. Lee, the New York Life Insurance Company changed the beneficiary on said policy from Florence

Lee, designated as wife of the defendant, to Reetha M. Shelley, designated as a friend.

XIII.

That on or about the 21st day of December, 1932, the said Florence Grusenmeyer communicated with the said New York Life Insurance Company herein stating in substance that she did not consent to any transaction concerning said policy, changing its terms or beneficiary thereof.

XIV.

That Arthur L. Lee, regularly and duly commenced a suit in the Circuit Court of the State of Oregon in the County of Multnomah against Florence Travers Lee, being case No. 110-286, for the annulment of the marriage between the said Arthur L. Lee and the said Florence Travers Lee. Service of summons was had on defendant Florence Travers Lee by publication. On the 25th day of January, 1934, a decree was entered in said suit declaring said marriage null and void from the beginning. Said decree did not determine any property rights between the parties.

XV.

That said policy of insurance above described, had a net cash value on the 25th day of January, 1934, of $35.99; that at said time defendant Arthur L. Lee had borrowed on said policy the sum of $550.00.

XVI.

That on or about the 7th day of June, 1937, with notice of the claim of defendant Florence Grusen-

meyer to said policy and the proceeds, the New York Life Insurance Company, at the request of Arthur L. Lee, changed the beneficiary of said policy to Isabel Clark, designated as friend.

XVII.

Subsequently and on or about the 1st day of December, 1952, Arthur L. Lee demanded of and from the said New York Life Insurance Company the cash surrender value of such policy in the amount of $1,711.25, which demand the said New York Life Insurance Company refused.

XVIII.

That the consent of said Florence Grusenmeyer to the surrender of said policy was not furnished to plaintiff.

XIX.

That prior to the commencement of any litigation Arthur L. Lee furnished to the plaintiff certified copies of the various Court decrees herein mentioned determining the marital status of the said Arthur L. Lee and Florence Travers Lee Grusenmeyer.

XX.

That Arthur L. Lee had fully complied with the terms of the policy and paid all premiums due thereon up to November 6, 1952.

XXI.

That subsequent to such demand for said cash surrender value by the defendant Arthur L. Lee, he refused to make any further or additional payment of premiums to the New York Life Insurance

Company, and he failed to make payment of the premium which became due on November 6, 1952, and subsequent premium payments.

XXII.

That subsequently Arthur L. Lee commenced an action in the Circuit Court of the State of Oregon for the County of Multnomah against the New York Life Insurance Company, demanding judgment of and against the said New York Life Insurance Company for the cash surrender value of said policy, namely $1,711.25, together with interest thereon at the rate of 6% per annum, commencing December 18, 1952, until paid, together with the further sum of $1,750.00 as reasonable attorneys' fees.

XXIII.

That thereafter the present suit was instituted by the plaintiff herein and the sum of $1,711.25 was paid into the registry of this Court by the plaintiff herein.

XXIV.

That the defendant Isabel Clark has never made any demand on the New York Life Insurance Company or asserted any claim to the proceeds of said policy and has defaulted herein.

Plaintiff's Contentions

1. That the cash surrender value of said policy is $1,711.25, the sum plaintiff paid into Court at the commencement of this suit for interpleader.

2. That defendant Arthur L. Lee and defendant Florence Grusenmeyer each claim that he or she

is the only person entitled to receive payment of the proceeds of $1,711.25, the cash surrender value of said policy.

3. That plaintiff is indifferent as to the respective claims of defendants Lee and Grusenmeyer.

4. That plaintiff cannot determine without hazard to itself which of said defendants and in what amounts said proceeds should be paid.

5. That the claims of defendants Lee and Grusenmeyer are such as to support an order of interpleader herein.

6. That the defendants should be restrained from instituting or prosecuting any actions against plaintiff for the proceeds of said policy.

7. That defendants Lee and Grusenmeyer be required to interplead and settle among themselves their respective claims to said proceeds.

8. That plaintiff be discharged from all liability on said policy of insurance and said policy be surrendered and cancelled.

9. That plaintiff recover its costs and disbursements herein incurred and a reasonable attorneys' fee out of said sum of money deposited in the registry of this Court.

10. That the marriage of the defendants Lee and Grusenmeyer is claimed to be valid by defendant Grusenmeyer.

11. That the demand of the defendant Arthur L. Lee for the cash surrender value of the policy

would have been allowed if the defendant Florence Lee Grusenmeyer had consented thereto and if the policy had been surrendered in accordance with its terms and provisions.

12. That the defendant Florence Grusenmeyer has appeared by answer and response to request for admissions and alleged that she is entitled to the sum on deposit.

13. That the defendant Florence Grusenmeyer does not oppose the allowance of plaintiff's claim for an order of interpleader.

Defendant Lee denies these contentions.

Contentions of Defendant, Arthur L. Lee

Defendant, Arthur L. Lee's contentions are as follows:

1. That no valid or legal marriage was entered into between Arthur L. Lee and Florence Grusenmeyer, for the reason that the said Florence Grusenmeyer had, at the time of the attempted marriage ceremony between her and Arthur L. Lee, a husband presently living.

2. That no community ever existed between the said Arthur L. Lee and Florence Grusenmeyer and no community funds went towards the payment of the premiums of this policy.

3. That the net cash value, at the time of the annulment of said purported marriage between the said Arthur L. Lee and Florence Grusenmeyer was less than the net cash value of said policy at the

time of said purported marriage and there was no increase in the value of said policy during said purported marriage.

4. That under the terms of said policy the said Florence Grusenmeyer has no interest in said policy whether community funds were used for the payment of premiums or not; that the rights of the defendant, Arthur L. Lee, and the liabilities of the plaintiff are determined by the terms of said policy which give the said Arthur L. Lee exclusive control of said policy, free from any claimed equities of any other person whatsoever.

5. That the defendant Florence Grusenmeyer has no interest, legal or equitable, in and to said policy of insurance or the cash surrender value thereof.

6. That the defendant Florence Grusenmeyer has advised the plaintiff and the defendant, Arthur L. Lee, through her attorney of record, that she does not intend to appear further herein in support of her contentions or claims to said policy or the proceeds thereof.

7. That the plaintiff knew, or should have known that the alleged claim of the said Florence Grusenmeyer was unfounded in law or in fact and was frivolous and that no basis for a bona fide interpleader exists.

8. That the plaintiff, by changing the beneficiary of said policy first to Reetha M. Shelley, and then, after notice of the claim of Florence Grusenmeyer, to Isabel Clark, as aforesaid, waived any right to

assert a right to interplead the proceeds of said policy because of any alleged claim of the said Florence Grusenmeyer.

9. That no formal demand was ever made by the plaintiff to or upon the defendant, Arthur L. Lee, for the surrender of said policy; that the defendant, Arthur L. Lee offered to surrender said policy to the plaintiff if a receipt were given him therefor; that the plaintiff refused to give the said Arthur L. Lee a receipt for said policy and the said policy was retained by the said Arthur L. Lee; that by its refusal to pay such cash surrender value because of the alleged claim of Florence Travers Lee Grusenmeyer, the plaintiff waived all other and formal requirements of the policy provided in connection with the surrender thereof for its cash surrender value.

10. That subsequent to the demand for the cash surrender value of said policy and the refusal to pay the same by the plaintiff, and upon the refusal of Arthur L. Lee to make any further or additional payment of premiums, the plaintiff herein asserted, and continued to assert until the commencement of this suit, that said policy of insurance had, by its terms, been converted into temporary extended insurance with no cash or surrender value.

11. That by its action in seeking to convert said insurance contract into temporary or extended insurance, with no cash value, after refusal to pay said cash surrender value, the plaintiff herein took a position adverse to the defendant, Arthur L. Lee,

and was not disinterested or unbiased, and therefore no right to interplead exists.

12. That the plaintiff has not paid into the registry of this court, a sum sufficient to satisfy the claims of the defendant Arthur L. Lee, and before a right to interplead should be granted, plaintiff should be required to deposit in the registry of this court, a sum sufficient to satisfy such demands.

Plaintiff denies these contentions.

Issue

Does a right to interplead, with other appropriate relief, exist in favor of the plaintiff?

Exhibits

The parties have examined the pre-trial exhibits in this cause and hereby stipulate that they may be offered in evidence subject only to objection on the ground of relevancy and materiality.

Plaintiff's Exhibits:

1. Life insurance policy No. 4-860-276 issued by plaintiff on the life of defendant Arthur L. Lee in the face amount of $3,000.00.

2. Copy of letter dated December 21, 1932, from defendant Grusenmeyer to plaintiff.

3. Copy of letter dated August 18, 1950, from Julian B. Brewer to plaintiff.

3A. Letter dated 1/7/51 from plaintiff to Elton Watkins, attorney for defendant Arthur L. Lee.

3B. Letter dated 9/15/50 from plaintiff to defendant Arthur L. Lee.

Defendant Arthur L. Lee's Exhibits:

4. New York Life Insurance Company Policy 4-860-276.

5. Letter from New York Life Insurance Company to Arthur L. Lee, dated March 5, 1951.

6. Letter from New York Life Insurance Company to Arthur L. Lee, dated December 18, 1952.

7. Letter from New York Life Insurance Company to Arthur L. Lee, dated January 13, 1953.

8. Letter from New York Life Insurance Company to Arthur L. Lee, dated June 5, 1953.

9. Letter from Richard C. O'Connor, attorney of record for Florence Grusenmeyer, dated October 28, 1953.

10. Certified copy divorce decree in Travers vs. Travers.

Order

It is ordered and agreed that this Pre-Trial Order will govern the course of the trial and will not be amended, except by consent or to prevent manifest injustice.

The Court, finding that the foregoing clearly and accurately reflects the pre-trial conference had

herein and the stipulations and agreements of the parties, hereby ratifies and confirms the foregoing proceedings in all things, and does hereby

Order that the Pre-trial Order be and the same hereby is incorporated into and hereby made a part of the record in this case for the purpose of controlling the course of proceedings on the formal trial hereof before the Court.

Dated this 30th day of September, 1954.

/s/ CLAUDE McCOLLOCH,
District Judge.

Approved:

/s/ DONALD W. McEWEN,
Of Attorneys for Plaintiff.

/s/ C. X. BOLLENBACK,
Of Attorneys for Defendant.

[Endorsed]: Filed September 30, 1954.

[Title of District Court and Cause.]

MEMORANDUM

It does not seem right to me that the insurance company could invoke Federal interpleader (under the circumstances here present) and thus avoid the State statute respecting attorney's fees. I will welcome authority, if there is any, on the point.

Dated: November 1, 1954.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed November 1, 1954.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled matter having come on for trial, upon the segregated issue of determining whether the plaintiff's suit for interpleader can be maintained, before the Honorable Claude McColloch, Chief Judge of this Court, plaintiff appearing by and through Theodore B. Jensen and Donald W. McEwen of its attorneys, the defendant Arthur L. Lee appearing personally and by and through Elton Watkins and C. X. Bollenback, his attorneys, and the defendants Florence Grusenmeyer, formerly Florence Lee, and Isabel Clark appearing not, neither personally nor by and through their attorneys, and,

Evidence having been adduced on behalf of the respective parties, arguments of counsel having been heard and considered and briefs submitted and considered, and the Court being fully advised in the premises, finds the following facts:

Findings of Fact

I.

That plaintiff is a corporation, organized and existing under and by virtue of the laws of the State of New York, and the defendants Arthur L. Lee and Isabel Clark are residents of the State of Oregon.

II.

That defendant Florence Grusenmeyer, formerly

Florence Lee, is a resident of the State of California.

III.

The amount involved in this controversy exceeds the sum of $500.00, exclusive of interest and costs.

IV.

That jurisdiction of this Court exists by virtue of the foregoing diversity of citizenship and by the amount in controversy (Section 1332a (1), 1335; Title 28 USC).

V.

That on or about the 16th day of November, 1915, the New York Life Insurance Company and the defendant Arthur L. Lee agreed that for and in consideration of payments or premiums made and to be made in the future by the said Arthur L. Lee, that the New York Life Insurance Company would, upon the death of the said Arthur L. Lee, pay to any beneficiary designated by him the sum of $3,000.00; that the said Arthur L. Lee and the said New York Life Insurance Company further agreed that the said Arthur L. Lee should and did have the right to change the beneficiary under such insurance agreement and that the right to change such beneficiary was without reservation or qualification; the said New York Life Insurance Company and the said Arthur L. Lee further agreed that the said Arthur L. Lee might, without the consent of any beneficiary, receive benefit, exercise every right and

enjoy every privilege conferred upon the said Arthur L. Lee under the terms of said insurance agreement. That the said insurance agreement further provided as follows:

Benefits on Surrender or Lapse.—After two full annual premiums shall have been paid, the Insured may within three months after any default in payment of premium, but not later, surrender the Policy, and,

(a) Receive its Cash Surrender Value less any indebtedness to the Company hereon. The Cash Surrender Value shall be the reserve on this Policy, at the date of default (omitting fractions of a dollar per thousand of insurance) and the reserve on any Paid-up Additions thereto, and any dividends standing to the credit of this Policy, less a surrender charge which in no case shall be more than one and one-half per centum of the sum insured. After premiums have been paid for ten years or more there will be no surrender charge. The reserve will be computed according to the American Table of Mortality and interest at the rate of three per centum per annum;

VI.

That said insurance agreement was incorporated in and represented by a policy of insurance issued by the said New York Life Insurance Company to the said Arthur L. Lee, being Policy No. 4-860-276.

VII.

That prior to September 1, 1926, Florence Grusenmeyer, one of the defendants herein, was the wife

of Frank E. Travers and was known as Florence Travers.

VIII.

That the said Florence Travers, now known as Florence Grusenmeyer, and the defendant Arthur L. Lee went through a marriage ceremony in the State of Nevada on the 31st day of July, 1926, and resided for some time in the State of California where community property laws exist.

IX.

That the New York Life Insurance Company Policy No. 4-860-276, in the name of Arthur L. Lee as insured had a net cash value on the 31st day of July, 1926, of $208.23. At said time a loan of $100.00 on said policy had been made to Arthur L. Lee.

X.

That a final decree of divorce in a suit then pending between the said Florence Travers and Frank E. Travers, in the Superior Court of the State of California for the County of Los Angeles, Dept. 3, Case No. D34430, was granted September 1, 1926, and entered of record September 3, 1926.

XI.

That on the 22d day of September, 1926, Arthur L. Lee requested the New York Life Insurance Company to change the beneficiary to the said Florence Lee.

XII.

That thereafter and on or about the 27th day of

May, 1932, upon the request of the said Arthur L. Lee, the New York Life Insurance Company changed the beneficiary on said policy from Florence Lee, designated as wife of the defendant, to Reetha M. Shelley, designated as a friend.

XIII.

That on or about the 21st day of December, 1932, the said Florence Grusenmeyer communicated with the said New York Life Insurance Company herein stating in substance that she did not consent to any transaction concerning said policy, changing its terms or beneficiary thereof.

XIV.

That Arthur L. Lee, regularly and duly commenced a suit in the Circuit Court of the State of Oregon in the County of Multnomah against Florence Travers Lee, being case No. 110-286, for the annulment of the marriage between the said Arthur L. Lee and the said Florence Travers Lee. Service of summons was had on defendant Florence Travers Lee by publication. On the 25th day of January, 1934, a decree was entered in said suit declaring said marriage null and void from the beginning. Said decree did not determine any property rights between the parties.

XV.

That said policy of insurance above described, had a net cash value on the 25th day of January, 1934, of $35.99; that at said time defendant Arthur

L. Lee had borrowed on said policy the sum of $550.00.

XVI.

That on or about the 27th day of June, 1937, with notice of the claim of defendant Florence Grusenmeyer to said policy and the proceeds, the New York Life Insurance Company, at the request of Arthur L. Lee, changed the beneficiary of said policy to Isabel Clark, designated as friend.

XVII.

Subsequently and on or about the 1st day of December, 1952, Arthur L. Lee demanded of and from the said New York Life Insurance Company the cash surrender value of such policy in the amount of $1,711.25, which demand the said New York Life Insurance Company refused unless Florence Grusenmeyer consented thereto.

XVIII.

That the consent of said Florence Grusenmeyer to the surrender of said policy was not furnished to plaintiff.

XIX.

That prior to the commencement of any litigation Arthur L. Lee furnished to the plaintiff certified copies of the various Court decrees herein mentioned determining the marital status of the said Arthur L. Lee and Florence Travers Lee Grusenmeyer.

XX.

That Arthur L. Lee had fully complied with the

terms of the policy and paid all premiums due thereon up to November 6, 1952.

XXI.

That subsequent to such demand for said cash surrender value by the defendant Arthur L. Lee, he refused to make any further or additional payment of premiums to the New York Life Insurance Company, and he failed to make payment of the premium which became due on November 6, 1952, and subsequent premium payments.

XXII.

That subsequently Arthur L. Lee commenced an action in the Circuit Court of the State of Oregon for the County of Multnomah against the New York Life Insurance Company, demanding judgment of and against the said New York Life Insurance Company for the cash surrender value of said policy, namely, $1,711.25, together with interest thereon at the rate of 6% per annum, commencing December 18, 1952, until paid, together with the further sum of $1,750.00 as reasonable attorneys' fees. That at the time of the institution of said suit and prior thereto plaintiff asserted an interest in and to said policy adverse to the said Arthur L. Lee, namely, that said policy had been converted to extended insurance without any cash value.

XXIII.

That thereafter the present suit was instituted

by the plaintiff herein and the sum of $1,711.25 was paid into the registry of this Court by the plaintiff herein.

XXIV.

That the defendant Isabel Clark has never made any demand on the New York Life Insurance Company or asserted any claim to the proceeds of said policy and has defaulted herein.

XXV.

~~That the defendants Florence Grusenmeyer, formerly~~ Florence Lee, and Isabel Clark, or either of them, have no interest in the proceeds of said policy; that the plaintiff, the new York Life Insurance Company, knew, or should have known, at the time of the institution of this suit that said defendants Florence Grusenmeyer, formerly Florence Lee, and Isabel Clark, or either of them, had no such interest in said policy or its proceeds and that any claim asserted by either of said defendants was sham and ~~frivolous.~~

XXVI.

That the defendant Arthur L. Lee refused to surrender said policy to the plaintiff for the sole reason that plaintiff refused to give him a good and proper receipt therefor.

XXVII.

That the claim asserted against the plaintiff herein by the defendant Arthur L. Lee is greatly in excess of the amount deposited by the plaintiff in the registry of this Court.

XXVIII.

That to allow interpleader by the plaintiff in the instant case would deprive defendant Arthur L. Lee of rights under the policy and under the statutes of the State of Oregon to which he is entitled, namely, the recovery of interest, costs and attorneys' fees demanded by him against the plaintiff in the action pending in the Circuit Court of the State of Oregon for the County of Multnomah.

Based upon the foregoing Findings of Fact, the Court draws the following

Conclusions of Law

I.

That plaintiff is not entitled to interplead.

II.

That the within suit should be dismissed and the deposit heretofore made by the plaintiff in the Registry of this Court in the sum of $1,711.25 should be returned to the plaintiff.

Dated this 15th day of November, 1954.

/s/ CLAUDE McCOLLOCH.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 15, 1954.

In the United States District Court for the District of Oregon

Civil No. 7070

NEW YORK LIFE INSURANCE COMPANY, a Corporation,

Plaintiff,

vs.

ARTHUR L. LEE, FLORENCE GRUSENMEYER, Formerly FLORENCE LEE, and ISABEL CLARK,

Defendants.

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law filed herein, and the Court being fully advised in the premises:

It Is Herewith Ordered that the above-entitled action be, and the same hereby is, dismissed, and

It Is Further Ordered that the sum heretofore deposited in the Registry of this Court by the plaintiff herein, in the amount of $1,711.25, be returned to the plaintiff herein, and

It Is Further Ordered that the defendant, Arthur L. Lee, have judgment against the plaintiff herein for his costs and disbursements incurred herein, taxed at $.....

Dated this 15th day of November, 1954.

/s/ CLAUDE McCOLLOCH,
Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 15, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Arthur L. Lee, defendant, and C. X. Bollenback and Elton Watkins, attorneys for defendant, Arthur L. Lee; and to Florence Grusenmeyer, formerly Florence Lee, and R. C. O'Connor, attorney for defendant, Florence Grusenmeyer.

Notice is hereby given that New York Life Insurance Company, a corporation, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final order and judgment entered in the above-entitled action on the 15th day of November, 1954, in favor of defendant, Arthur L. Lee, and against plaintiff.

Dated this 14th day of December, 1954, at Portland, Oregon.

DAVIS, JENSEN & MARTIN,
and
DONALD W. McEWEN,

By /s/ ROLAND DAVIS,
Attorneys for Plaintiff.

[Endorsed]: Filed December 14, 1954.

United States District Court
District of Oregon

Civil No. 7070

NEW YORK LIFE INSURANCE COMPANY, a Corporation,

Plaintiff,

vs.

ARTHUR L. LEE, FLORENCE GRUSENMEYER, Formerly FLORENCE LEE, and ISABEL CLARK,

Defendants.

September 30, 1954

Before: Honorable Claude McColloch,
Chief Judge.

Appearances:

DONALD W. McEWEN, and
THEO. B. JENSEN,
Of Attorneys for Plaintiff.

ELTON WATKINS, and
C. X. BOLLENBACK,
Of Attorneys for Defendant.

TRANSCRIPT OF TESTIMONY AND PROCEEDINGS

Mr. McEwen: The parties have stipulated the pre-trial order may be amended by the addition of three exhibits. The Reporter has already marked

them and at the conclusion of the case we can enter those on the order itself.

Introduction of Exhibits

The following exhibits, identified in the pretrial order, were thereupon received in evidence:

Plaintiff's Exhibits

No. 2—Copy of letter dated December 21, 1952, Defendant Grusenmeyer to Plaintiff.

No. 3—Copy of letter dated August 18, 1950, Julian B. Brewer to Plaintiff.

No. 3-A—Letter dated January 7, 1951, Plaintiff to Elton Watkins.

No. 3-B—Letter dated September 15, 1950, Plaintiff to Defendant Lee.

Defendants' Exhibits

No. 10—Certified copy of divorce decree, Travers vs. Travers.

No. 4—Life Insurance Policy, New York Life Insurance Company, No. 4-860-276, issued on the life of the Defendant, Arthur L. Lee, in amount $3,000.

No. 5—Letter, New York Life Insurance Company to Arthur L. Lee, dated March 5, 1951.

No. 6—Letter, New York Life Insurance Company to Arthur L. Lee, dated December 18, 1952.

No. 7—Letter, New York Life Insurance Company to Arthur L. [2*] Lee, dated January 13, 1953.

No. 8—Letter, New York Life Insurance Company to Arthur L. Lee, dated June 5, 1953.

No. 9—Letter, New York Life Insurance Com-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

pany to Richard C. O'Connor, Attorney of Record for Florence Grusenmeyer, dated October 28, 1953.

Mr. McEwen: The plaintiff has marked the policy as Plaintiff's Exhibit No. 1, and in the pretrial order we reserved numbers for the policy, both No. 1 and No. 4. It has now been marked No. 4.

ARTHUR L. LEE

one of the defendants, produced as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Watkins:

Q. You are Arthur L. Lee, one of the defendants in this proceeding? A. Yes.

Q. You are the identical Arthur L. Lee, the identical man, [3] who received the policy from the New York Life Insurance Company, No. 4-860-276?

A. If that is the policy you have in your hand, yes.

Q. I am reading from the policy. A. Yes.

Q. Do you recall any circumstances, after you contacted me concerning your troubles with the New York Life, with reference to an attempted delivery of the policy? A. Yes, I do.

Q. Will you tell the Court briefly when it was, as near as you recall it, and where it was, and what occurred?

A. The time lapse of the policy was in December, and following right along there, rather early

(Testimony of Arthur L. Lee.)

in January, I think, in 1952, as near as I recall it, I appeared in the Portland office with the policy.

Q. What office? The office of what?

A. Of the New York Life Insurance Company, and signed a request for them to pay me the cash surrender value of the policy. I had the policy with me. They asked me to sign this request.

The policy was laying on the counter and at the time I asked for a receipt for the policy. I was refused a receipt. I told them I didn't wish to surrender the policy until I was given a receipt for it.

I had previously contacted you and asked you whether [4] or not I should and was advised by you not to give them the policy unless they gave me a receipt for the policy. I was tendering it and was perfectly willing to give it to them.

Q. What would have been the situation if they had given you a receipt? What would you have done?

A. I would let them take the policy right then. Immediately after, as I recall——

Q. What is that?

A. Immediately after that I brought the policy over and tendered it to you.

Mr. Watkins: You may cross-examine.

Cross-Examination

By Mr. McEwen:

Q. Do you remember the gentleman you discussed that with, the representative of the New York Life Insurance Company? Do you remember

(Testimony of Arthur L. Lee.)

his name?

A. I think it is the gentleman sitting over (indicating).

Q. His name is Mr. Krueger, is that correct?

A. I am not sure about his name. I saw various ones in the office.

Q. Isn't it a fact, Mr. Lee——

A. However, there are several there, and I have seen him in the office. As I recall, he is the individual.

Q. Your best recollection is that it was this gentleman right [5] here?

A. I think it was him.

Q. Didn't Mr. Krueger offer to give you a receipt and wasn't there some discussion as to what the terms of the receipt would be?

A. No, he definitely refused to give me a receipt for the thing.

Q. He definitely refused?

A. He said he couldn't give me a receipt. As I recall, his words were that he couldn't give me a receipt, I think something to that effect, that he had no authority to give me a receipt, or something like that. Anyway, I was refused a receipt for the policy.

Q. During the time you have been a policy holder of the company you had made certain loans from the company on the policy, had you not?

A. Yes.

Q. Did you have to surrender the policy at that time in order to obtain those loans? A. Yes.

Q. Did you get a receipt for the policy on those particular times?

(Testimony of Arthur L. Lee.)

A. As I recall, I had something to show that the policy was in their possession.

Q. You do not recall what it was? [6]

A. No. That has been several years ago.

Q. I appreciate that.

A. I don't recall the details.

Mr. McEwen: I believe that is all.

Mr. Watkins: That is all, your Honor.

(Witness excused.)

Mr. Watkins: That is our case on the facts.

(Recess.)

Mr. Watkins: May I ask Mr. Lee to take the stand for one question about that policy?

The Court: Yes.

ARTHUR L. LEE

one of the Defendants, having previously been duly sworn, was recalled and further testified as follows:

Direct Examination

By Mr. Watkins:

Q. Mr. Lee, prior to this time when you went to the New York Life Insurance Company office at Portland, Oregon, and the events concerning which you have just testified occurred, that you would not give up the policy unless they gave you a receipt, what is the fact, if it is a fact, as to the policy having been delivered before to the New York Life Insurance Company?

A. If I understand your question—— [7]

(Testimony of Arthur L. Lee.)

Q. Prior to this time.

A. Whenever I had a change of beneficiary and when I obtained a loan or paid a loan off, they sent the policy back to their home office to have that changed and the policy was tendered to them for that purpose.

Q. In connection with your several requests with respect to loans and changes of beneficiary, they complied with those requests, is that the situation?

A. I don't quite understand the question.

(Question read.)

A. Yes.

Q. (By Mr. Watkins): Was there any request made by you which the New York Life Insurance denied and thereafter returned to you your policy?

A. One request, yes. After I consulted you, I think you obtained photostatic copies of the decree of annulment and submitted those with the policy, asking them to take off that rider as to Florence Lee.

Q. Did they state the fact as to whether they would or would not take off that rider?

A. They would not take the rider off, no.

Q. I will hand you Exhibit No. 5 and I will ask you to look at it and state whether or not that letter is the one you referred to when you said they refused to take off the rider and returned you your policy? [8]

A. This apparently is the letter with reference to that, yes.

Mr. Watkins: You may cross-examine.

Mr. McEwen: No questions.

(Witness excused.)

Mr. Watkins: That is our case, your Honor. [9]

Plaintiff's Rebuttal Testimony

WILLIAM P. KRUEGER

produced as a witness on behalf of Plaintiff, in rebuttal, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McEwen:

Q. Your name is William P. Krueger?

A. Yes.

Q. By whom are you employed?

A. New York Life Insurance Company at the Portland office.

Q. In what capacity? A. As a clerk.

Q. How long have you been with the New York Life Insurance Company? A. 34 years.

Q. Have you met the gentleman who just testified, Mr. Arthur Lee? A. Yes.

Q. In the course of your duties as clerk for the company? A. Yes.

Q. Did you have some discussion with him concerning his request for the cash surrender value of the policy?

A. Well, I had waited on him when he came to the office, and I had him sign the surrender request.

Q. Was there any conversation relating to a receipt for the [10] policy, that you recall?

A. Yes. The company had their own form of

(Testimony of William P. Krueger.)

receipt, which I have brought up here. We make that in duplicate and the original is given to the insured. Of course, I offered to give him a receipt for the policy, but he also wanted to make some alterations on there, in case they refused to allow the cash value that the policy would be returned to him. I told him I was not authorized to make any changes in our form of receipt.

Q. Did you have any further conversation with him concerning a receipt?

A. Well, he would not surrender the policy under the conditions of the company's receipt, which is a printed form, so I took the surrender request—he kept the policy—and I forwarded the surrender request to the home office, stating that he refused to surrender the policy until settlement was made of the cash value.

Q. Is that form you tendered him the same form you have always used?

A. The same form we have always used; that is right.

Q. In receipting for a policy? A. Yes.

Q. This conversation took place approximately in January, 1952? A. Perhaps so. [11]

Q. In the Portland office? A. Yes.

Q. Do you have one of the form receipts?

A. Yes, I brought the pad along.

Q. Will you read the language contained in the receipt?

A. "New York Life Insurance Company, 51 Madison Avenue, New York 10, New York," and a

(Testimony of William P. Krueger.)

space for the date and the policy number.

"Received from"—and then we fill in the policyholder's name and address, and then it says, "Papers described below."

Then, if they bring the policy in for surrender, we write, "Policy for surrender."

If they bring it in for a loan, we write, "Policy for a loan," or "Change of beneficiary," or whatever it is.

The receipt continues: "Said papers are received without committing the company to any course of action in connection herewith and without prejudice to any of its rights."

Then we put: "Portland branch office" and there is a line for the clerk to sign for the company.

Q. You actually sign on behalf of the company?

A. That is right.

Mr. McEwen: I believe that is all. [12]

Cross-Examination

By Mr. Bollenback:

Q. What is your capacity? A. A clerk.

Q. What was the request Mr. Lee wanted on that receipt?

A. Well, he wanted me to acknowledge receipt of the policy, but also that if the company refused to grant the cash value the policy would be returned to him.

Mr. Bollenback: Could we have a copy of the receipt which the witness has read?

Mr. McEwen: Just hand him the book.

Q. (By Mr. Bollenback): Did you consider this provision in that receipt that "Said papers are

(Testimony of William P. Krueger.)
received without committing the company to any course of action in connection therewith and without prejudice to any of its rights" was inconsistent with Mr. Lee's request that the policy be returned if the cash value was not paid?

A. No. I don't know of any reason why it should not be paid.

Q. You don't know of any reason why it should not be paid?

A. At that time I didn't know of this community property law that took place in California.

Mr. Bollenback: That is all.

Mr. McEwen: Step down. That is all the rebuttal, your Honor.

(Testimony closed.) [13]

Reporter's Certificate

I, Ira G. Holcomb, an Official Reporter of the above-entitled Court, do hereby certify that on September 30, 1954, I reported in shorthand the proceedings had in the above-entitled Court, and that the foregoing transcript, consisting of Pages 1 to 13, both inclusive, is a true, full and accurate transcript of said shorthand notes of said proceedings, so taken by me as aforesaid, and of the whole thereof.

Dated at Portland, Oregon, this 11th day of January, 1955.

/s/ IRA G. HOLCOMB,
Official Reporter.

[Endorsed]: Filed January 11, 1955. [14]

(Testimony of William P. Krueger.)

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(Testimony of William P. Krueger.)

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Mr. Bollenback: That is all.

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Dated at Portland, Oregon, this 11th day of January, 1955.

/s/ IRA G. HOLCOMB,
Official Reporter.

[Endorsed]: Filed January 11, 1955. [14]

PLAINTIFF'S EXHIBIT No. 2

1060 Bush Street,
San Francisco, Calif.

December 21, 1932.

New York Life Insurance Company,
Wells Fargo Bank Building,
1 Montgomery Street,
San Francisco, Calif.

Gentlemen:

For a number of years there has been in existence a policy which you issued insuring the life of Arthur L. Lee, my husband. The amount of the policy is $3,000.00 and I am named as the beneficiary in the policy.

This is to inform you that I do not consent to a change of the beneficiary in said policy from myself to any other person, nor do I consent to any assignment of the policy for the purpose of a loan or otherwise, nor do I consent to the surrender of said policy. You are also further notified that I do not consent to the borrowing of any funds on said policy by Mr. Lee or any other person.

Will you please acknowledge receipt of this communication?

Yours very truly,
/s/ MRS. FLORENCE LEE.

Received December 22, 1932.

PLAINTIFF'S EXHIBIT No. 3

Julian D. Brewer
Attorney at Law
41 Sutter Street
San Francisco 4

August 18, 1950.

New York Life Insurance Co.,
One Montgomery Street,
San Francisco.

Arthur L. Lee, Insured.
Policy No. 4860-276.

Gentlemen:

I am the attorney for Florence Grusenmeyer, resident of this city and the former wife of the above-named policy holder. My client was divorced from him a number of years ago, and to avert unpleasantness she did not keep in touch with her former husband as to her rights under the policy but understands that it was in a form requiring her consent before she could be eliminated as the designated beneficiary thereof.

Mrs. Grusenmeyer states that she at no time consented to a change of beneficiary.

She was recently informed by a cousin of the policy holder that he died about 1947. Mr. Lee was a resident of San Francisco and the policy was taken out here, so far as Mrs. Grusenmeyer knows.

Please make inquiry, in the premises, of your head office and inform me of the exact situation.

Very truly yours,
/s/ JULIAN D. BREWER.

Received August 21, 1950.

PLAINTIFF'S EXHIBIT No. 3-A

New York Life Insurance Company
51 Madison Avenue
New York 10, N. Y.

(Copy)

January 7, 1951.

Elton Watkins, Esq.,
Failing Building,
Portland, Oregon.

Re: Policy No. 4 860 276.
Arthur L. Lee (JVP:mvy).

Dear Sir:

Your letter of December 6, 1951, has been referred to me.

It is my feeling that this Company cannot take the responsibility of determining the law and facts of this matter but that it is a problem to be settled by Mr. Lee and Mrs. Grusenmeyer. I do not think that this Company is in a position to completely disregard the notice of claim that she has filed with it.

On the other hand, I do not think that this necessarily calls for litigation. It may be that if her attorney is advised as to your claim, he and she might be willing to release all claim under this policy. If it would be helpful that I write to Attorney Brewer, I would be glad to do so if you would so advise me.

If she indicates a willingness to release her claim, I think it would suffice if we were furnished with a statement from her that she releases all claim to

any right, title or interest in this policy and authorizes the New York Life Insurance Company to consider that she has no interest in this policy.

Very truly yours,

FERDINAND H. PEASE,
General Counsel.

By .....,
JAMES V. PHELAN,
Attorney.

Received January 8, 1952.

PLAINTIFF'S EXHIBIT No. 3-B

Copy to Oregon Br.

September 15, 1950.

Mr. Arthur L. Lee,
Hereford Hotel,
2241 N.W. Hoyt St.,
Portland, Oregon.

Re: Pol. 4860 276.
Arthur L. Lee.

Dear Mr. Lee:

I am attaching hereto photostatic copy of a letter received from the attorney for your former wife, which is self-explanatory. I am also attaching photostatic copy of letter received from your wife in 1932, claiming a community interest in this policy. The Company's records indicate that you have designated Isabelle Clark as beneficiary of this policy. We believe it to be in your best interest and that of

any beneficiary to clear up any question of community interest at this time. In the event that you are able to reach an understanding with your former wife, you should have her execute the enclosed release of community interest form and forward it to the Company for recording.

If your wife has no community interest in this policy, please submit evidence to support your statement. It may be that the original Bill of Complaint makes mention of the fact or it may be mentioned in any copy of the interlocutory decree of divorce or in any final divorce decree. Then again there may be a separate community property settlement agreement which would bear out these statements.

Please know that the Company is most anxious to effect prompt settlement of claims with beneficiaries and it is for that reason that we are writing to you asking that you attempt to clarify the title of your policy at this time.

Your co-operation in this matter will be appreciated and if there is any further information desired please feel entirely free to write, directing your inquiries to my attention.

Sincerely,

.....,

Superintendent.

CHARTERED 1841

59

NEW YORK LIFE INSURANCE COMPANY

By This Policy of Insurance Agrees to Pay

FACE AMOUNT OF THE POLICY: *** THREE THOUSAND *** Dollars

at the Home Office of the Company in the City and State of New York to

BENEFICIARY: Beneficiary changed—See indorsement hereon. Dora Lee, mother of the insured, Beneficiary.
(with ** the right on the part of the Insured to change the Beneficiary as hereinafter provided)

upon receipt at said Home Office of due proof of the death during the continuance of this contract,

INSURED: of *** ARTHUR L. LEE *** the Insured.

This insurance is granted in consideration of the payment of the first premium

PREMIUM: of ** Sixty-four 2/100 ** Dollars

the receipt of which is hereby acknowledged, constituting payment for the period terminating on the Sixth day of November in the year Nineteen Hundred and sixteen and the payment of a like sum on said date and on the Sixth day of ** November ** in every year thereafter during the continuance of this Policy until the death of the Insured.

HOW AND WHEN PAYABLE

INCONTESTABILITY: This Policy is free of conditions as to residence, travel, occupation, or military or naval service, and shall be incontestable after one year from its date of issue except for non-payment of premium. After its delivery to and receipt by the Insured this Policy takes effect as of the Sixth day of November Nineteen Hundred and fifteen

DATE POLICY TAKES EFFECT

The benefits and provisions printed or written by the Company on the following pages are a part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In Witness Whereof the NEW-YORK LIFE INSURANCE COMPANY has caused this contract to be signed this Sixteenth day of November Nineteen Hundred and fifteen

Examined 119 D. D. L. 913-2

Secretary — President

Registrar.

AGE 24

INSURANCE PAYABLE AT DEATH. PREMIUMS PAYABLE DURING LIFE. ANNUAL DIVIDEND.

Section 1—PARTICIPATION IN SURPLUS

The proportion of divisible surplus accruing upon this Policy shall be ascertained and distributed annually and will not be conditioned upon the payment of the next premium. At the option of the Insured such dividend shall each year, on the anniversary of the Policy, be either

(a) Paid in Cash; or,

(b) Applied toward the payment of any premium or premiums; or,

(c) Applied to the purchase of a participating Paid-up Addition to the sum insured; or,

(d) Left to accumulate to the credit of the Policy at such rate of interest as the Company may declare on such funds, and payable on the maturity of the Policy or withdrawable in cash on any anniversary date of the insurance. The rate of interest shall not be less than three per centum compounded and credited annually.

If the Insured fails to notify the Company in writing, within three months after the Company shall have mailed to him a written notice of the amount of said dividend and the options available as aforesaid, which option he selects, the Company shall then apply said dividend to the purchase of a paid-up addition to the sum insured. Such paid-up addition may be surrendered for cash at any time, and the Cash Value thereof shall not be less than the original cash dividend.

Section 2—CASH LOANS AND BENEFITS ON SURRENDER OR LAPSE

CASH LOANS.—At any time after two full years' premiums have been paid, and while this Policy is in force, the Company shall advance to the Insured on the sole security of this Policy as duly evidenced in writing, any sum desired, the total indebtedness to the Company, including any advance then made, shall, however, not exceed that sum which with six per centum interest shall equal the Cash Surrender Value at the end of the then current insurance year. Interest on the loan shall be at the rate of six per centum per annum, payable annually on the premium paying anniversary date of the Policy. All or any part of the sum advanced may be repaid at any time. Failure to repay such advance or to pay interest thereon shall not avoid the Policy, but if the interest is not paid when due it shall be added to the indebtedness, and whenever the amount of the total indebtedness equals the Cash Surrender Value, the Policy shall become void one month after the Company shall have mailed notice of such fact to the last known address of the Insured and of the assignee of record, if any.

BENEFITS ON SURRENDER OR LAPSE. After two full annual premiums shall have been paid, the Insured may within three months after any default in payment of premium, but not later, surrender the Policy, and,

(a) Receive its Cash Surrender Value less any indebtedness to the Company hereon. The Cash Surrender Value shall be the reserve on this Policy, at the date of default (omitting fractions of a dollar per thousand of insurance) and the reserve on any Paid-up Additions thereto, and any dividends standing to the credit of this Policy, less a surrender charge which in no case shall be more than one and one-half per centum of the sum insured. After premiums have been paid for ten years or more there will be no surrender charge. The reserve will be computed according to the American Table of Mortality and interest at the rate of three per centum per annum; or,

(b) Receive non-participating Paid-up Insurance payable at the same time and on the same conditions as this Policy except as to Disability Benefits. The Insured may at any time obtain a loan on such Paid-up Insurance in accordance with the provisions contained in this Section, or surrender such Paid-up Insurance for its Cash Surrender Value.

(c) If the Policy be not surrendered for cash, or for Paid-up Insurance as above, the insurance shall be automatically continued for the face amount of this Policy plus any dividend additions and less any indebtedness to the Company hereon, from the date of default, for such term in years and months as is hereinafter provided, but without future participation and without the right to Loans or Cash Surrender Value and without Disability Benefits.

The amount of Paid-up Insurance, or the Term for which the insurance will be continued, shall be such as the Cash Surrender Value less any indebtedness to the Company hereon will purchase as a net single premium at the age of the Insured at the date of default, according to the American Table of Mortality and interest at the rate of three per centum per annum.

TABLE OF LOAN AND SURRENDER VALUES.

The figures contained in this table represent the maximum amounts available, assuming that premiums have been paid in full for the number of years stated in the table, and that there is no indebtedness to the Company hereon and that there are no outstanding dividends.

AFTER POLICY HAS BEEN IN FORCE	CASH SURRENDER VALUE LOAN VALUE* FOR EACH $1,000 OF INSURANCE	PAID-UP LIFE INSURANCE FOR EACH $1,000 OF INSURANCE	FACE AMOUNT OF THE POLICY CONTINUED FOR	
			Yrs	Mos
2	$8	$22	1	0
3	21	56	2	8
4	28	75	3	8
5	36	93	4	7
6	43	113	5	8
7	56	143	7	4
8	68	172	9	0
9	81	201	10	9
10	95	230	12	5
11	106	253	13	8
12	117	275	14	10
13	129	298	15	10
14	141	320	16	9
15	154	342	17	6
16	167	364	18	2
17	180	385	18	8
18	194	407	19	2
19	207	428	19	5
20	222	448	19	8
21	236	469	19	10
22	251	489	20	0
23	267	509	20	0
24	282	529	20	0
25 Years	298	548	19	11

Values for later years shall be computed upon the above basis, and will be furnished on request.

*The Loan Values in the above table are the maximum amounts available at the end of the policy year indicated. Loans may also be obtained during the policy year as set forth in this Section under "Cash Loans".

Ed. July, '10. O. L. 1,000. 24

Section 3—DISABILITY BENEFITS

A. Waiver of Premiums.—If, after this Policy shall have been in force one full year and before default in the payment of any premium, the Company receives due proof that the Insured before attaining the age of sixty years has become wholly disabled by bodily injury or disease so that he is and will be presumably, thereby permanently and continuously prevented from engaging in any occupation whatsoever for remuneration or profit, the Company shall waive payment of each premium as it thereafter becomes due during the Insured's said disability. In making any settlement under this Policy the Company shall not deduct any part of the premiums so waived, and the Loan and Cash Surrender Values provided for under Section 2 shall increase from year to year in the same manner as if the premiums so waived had been paid in cash. Under all the conditions aforesaid, except that the Insured shall have attained the age of sixty years before becoming disabled, the Company shall waive payment of each premium thereafter becoming due during such disability, but the face amount of the Policy shall be reduced by the amount of each such waived premium, and the Loan and Cash Surrender Values as provided for under Section 2 shall be based upon said reduced amount of insurance in the same manner as if the premiums for such reduced amount of insurance had been duly paid.

B. Instalment Payments.—In addition to waiving payment of premiums as aforesaid, if such disability shall have occurred before the Insured attained the age of sixty years, the Company, one year after said proof of such disability, shall pay to the Insured one-tenth of the face amount of the Policy and a like amount in each insurance year thereafter during the continuance of such disability prior to the maturity of the Policy; the Policy must be returned to the Company for the endorsement thereon of each payment. At the Insured's option any such payment or payments may be left with the Company to accumulate until the maturity of the Policy at such rate of interest as the Company may declare on funds so held by it but at a rate not less than three per centum, compounded annually. Each instalment shall reduce to that extent the amount of insurance in force, and the Loan and Cash Surrender Values provided for under Section 2 shall be calculated for the reduced amount insured on the basis provided in said Section 2. If at the time when any such instalment becomes payable there shall be an indebtedness on the Policy in excess of the Cash Surrender Value of the reduced amount of insurance, the Company shall apply such part of the instalment as may be necessary to reduce the indebtedness to the amount secured by such Cash Surrender Value. Whenever the total amount of said instalments, together with the amount of any remaining indebtedness to the Company, shall equal the face amount of the Policy, plus any paid-up dividend additions, unpaid dividends and dividends left to accumulate to the credit of the Policy, then the Company's obligations under the Policy shall thereby be fully satisfied and discharged without further action.

C. Recovery from Disability.—Should the Company accept under this Policy proofs of disability, it may nevertheless at any time thereafter, and from time to time, but not oftener than once a year, demand of the Insured proof of the continuance of such disability, and upon failure to furnish such proof, or, if it appears that the Insured has become able to engage in any occupation whatsoever for remuneration or profit, no further premiums shall be waived and no further instalment payments will be made by the Company. But if the amount of the insurance shall then have been reduced under any of the foregoing provisions such reduced amount of insurance shall thereafter be the face amount of the Policy, and the premiums thereafter falling due will be reduced in proportion to the reduced amount of insurance, and all benefits under the Policy will be reduced accordingly.

Without prejudice to any other cause of disability, the entire and irrecoverable loss of the sight of both eyes, or the severance of both hands above the wrists, or of both feet above the ankles, or of one entire hand and one entire foot shall be considered as total and permanent disability within the meaning of this Section.

Isabelle Clark, friend of the insured. Subject to any Community Property interest which Florence Lee, wife may have or claim in policy. March 1, 1946

Section 4—LOAN INSURANCE

Any indebtedness to the Company against this Policy may be covered by loan insurance, and, upon due proof of the death of the Insured, such loan insurance shall be applied to the cancelation of any such indebtedness. Loan insurance shall be subject to the following conditions:

First.—Evidence of insurability satisfactory to the Company shall be required. No loan insurance shall take effect until the Insured shall have received from the Company a certificate thereof.

Second.—Premiums must be paid in accordance with the rates in the following table. The premium for loan insurance shall be computed at the attained age of the Insured at the time when such loan insurance is made or renewed. For periods of less than one year, the premium shall be at the rate of one-tenth of the one year's premium for each month and fraction of a month.

Third.—Loan insurance shall not be granted for any period extending beyond the next premium paying anniversary date of this Policy, but may be renewed from year to year subject to evidence of insurability satisfactory to the Company and payment of premium at the attained age, but no loan insurance shall be granted or renewed after age sixty-five.

Fourth.—Whenever the loan insurance exceeds the indebtedness the Company may cancel that portion of the loan insurance in excess of the indebtedness, and refund the unearned premium.

Premiums for each $100 of Loan Insurance.

Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year	Insured's Attained Age	Premium for One Year
16	$0.73	34	$0.86	53	$1.57
18	0.74	36	0.86	54	1.67
17	0.74	36	0.87	55	1.79
18	0.74	37	0.89	56	1.91
19	0.75	38	0.90	57	2.05
20	0.75	39	0.92	58	2.21
21	0.76	40	0.94	59	2.38
22	0.76	41	0.96	60	2.57
23	0.77	42	0.99	61	2.79
24	0.77	43	1.01	62	3.01
25	0.78	44	1.04	63	3.28
26	0.78	45	1.07	64	3.55
27	0.79	46	1.11		
28	0.79	47	1.15		
29	0.80	48	1.20		
30	0.81	49	1.26		
31	0.82	50	1.33		
32	0.83	51	1.40		
33	0.84	52	1.48		

Section 5—OTHER BENEFITS AND PROVISIONS

AGE.—If the age of the Insured has been misstated the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

ASSIGNMENT.—Any assignment of this Policy must be made in duplicate and one copy filed with the Company at its Home Office. The Company assumes no responsibility as to the validity of any assignment.

CHANGE OF BENEFICIARY.—When the right of revocation has been reserved, or in case of the death of any beneficiary under either a revocable or irrevocable designation, the Insured, if there be no existing assignment of the Policy made as herein provided, may, while the Policy is in force, designate a new beneficiary, with or without reserving right of revocation, by filing written notice thereof at the Home Office of the Company accompanied by the Policy for suitable endorsement thereon. Such change shall take effect when endorsed on the Policy by the Company and not before. If any beneficiary shall die before the Insured, the interest of such beneficiary shall vest in the Insured.

GRACE.—A grace of one month (not less than thirty days) subject to an interest charge of five per centum per annum shall be allowed for the payment of every premium after the first, during which time the insurance shall continue in force. If death occurs within the period of grace the unpaid premium for the then current policy year shall be deducted from the amount payable hereunder.

PAID-UP AND ENDOWMENT OPTIONS.—Whenever the reserve on this Policy together with the reserve on existing dividend additions, if any, at the end of any policy year shall equal or exceed the net single premium for the attained age of the Insured by the American Experience Table of Mortality and interest at three per centum, for an amount or insurance equal to the face amount of this Policy, payable at the same time or under the same conditions as this Policy, the Company, at the written request of the Insured, will endorse the Policy as participating paid-up insurance for such amount as the said reserve will purchase when thus applied, any indebtedness to the Company to be a lien against said Paid-up Insurance upon the same terms and conditions as in Section 2; or, whenever said reserve at the end of any policy year shall equal or exceed the face amount of this Policy, the Company, upon surrender of the Policy and all claims thereunder, shall pay in cash the face amount of the Policy and any excess of said reserve, less any indebtedness to the Company.

PAYMENT OF PREMIUMS.—All premiums are payable on or before the date due, at the Home Office of the Company or to an agent of the Company upon delivery of a receipt signed by the President, a Vice-President, a Second Vice-President, a Secretary or the Treasurer of the Company, and countersigned by said agent. The premium is always considered as payable annually, in advance, but by agreement in writing and not otherwise may be made payable in semi-annual or quarterly payments. Any unpaid premiums required to complete the payments for the current policy year in which death occurs shall be deducted from the amount payable hereunder. The payment of a premium shall not maintain the Policy in force beyond the date when the next payment is due, except as herein provided.

PRIVILEGE OF CHANGE TO OTHER FORMS OF POLICIES.—At any time, and while in full force, and provided the Insured is then less than sixty years of age, this Policy may be changed without medical re-examination for a Policy of the same amount, upon any form of insurance issued by the Company at the time this Policy takes effect and having a higher rate of premium but without Disability Benefits. Such change shall be effective upon payment of a sum equal to the difference between the premiums on the new Policy and the premiums paid on this Policy (exclusive of the premiums paid for Disability Benefits), with compound interest at the rate of six per centum per annum from the due date of each payment to the date when the change is made, and upon the surrender of this Policy. The new Policy shall take effect as of the date of this Policy, and the premium shall be based upon the same age as this Policy. The cash value of any dividends standing to the credit of this Policy, as well as any additional cash value of such dividends that would have been credited under the new Policy may be used in the settlement of the difference of premiums.

REINSTATEMENT.—At any time after any default, upon written application by the Insured and upon presentation at the Home Office of evidence of insurability satisfactory to the Company, this Policy may be reinstated together with any indebtedness in accordance with the loan provisions of the Policy, upon payment of arrears of premiums with interest thereon at the rate of five per centum per annum.

SELF-DESTRUCTION.—In event of self-destruction during the first insurance year, whether the Insured be sane or insane, the insurance under this Policy shall be a sum equal to the premiums thereon which have been paid to and received by the Company, and no more.

MISCELLANEOUS PROVISIONS.—The Policy and the application therefor constitute the entire contract between the parties. All statements made by the Insured shall, in absence of fraud, be deemed representations and not warranties, and no such statement shall avoid this Policy or be used in defense to a claim hereunder unless it be contained in said written application, a copy of which was attached to this Policy when delivered. The Insured may, without the consent of the beneficiary, receive every benefit, exercise every right and enjoy every privilege conferred upon the Insured by this Policy. No agent is authorized to waive forfeitures, or to make, modify or discharge contracts, or to extend the time for paying a premium.

Section 6—INSTALMENT OPTIONS

If there is no assignment of this Policy, the Insured, or in case the Insured shall not have done so, the beneficiary after the Insured's death may, by written notice to the Company at its Home Office, make the proceeds of this Policy payable under one of the following options instead of in one sum, to wit:

Option 1—The proceeds of the Policy, or any part thereof, may be left with the Company subject to withdrawal in whole or in part at any time on demand in sums of not less than one hundred dollars. The Company shall pay interest on the proceeds so left with it at such rate as it may each year declare on such funds, at a rate, however, never less than three per centum per annum and credited annually.

Option 2—In equal instalments for an agreed number of years, payable immediately upon approval of proofs of death of the Insured, and annually, semi-annually, quarterly, or monthly thereafter as may be agreed. The amount of each instalment shall be in accordance with the instalment table on the last page of this Policy. Unless otherwise agreed in writing, the Company, upon due demand, shall pay in one sum the value of all unpaid instalments commuted at three per centum compound interest.

Option 3—In equal instalments for twenty years, and for as many years thereafter as the beneficiary shall survive, payable immediately upon approval of proofs of death of the Insured, and annually, semi-annually, quarterly, or monthly thereafter as may be agreed. The amount of each instalment shall be determined by the attained age, on the date of the approval of proofs of death of the Insured, of the beneficiary to whom it is payable and in accordance with the instalment table on the last page of this Policy. If the Insured shall so direct in writing, the instalments payable under this option shall not be transferable, nor subject to commutation or incumbrance, during the lifetime of the beneficiary entitled thereto.

If there be more than one beneficiary under the option selected, the proceeds so left with the Company, unless otherwise agreed in writing, shall be deemed to be divided into as many equal parts as there are beneficiaries, and shall be credited and paid to each beneficiary severally.

In the event of the death of a beneficiary any unpaid sum left with the Company under Option 1, or any unpaid instalments payable to him under Option 2, or any instalments for the fixed period of twenty years only under Option 3 which shall not then have been paid, shall be commuted at three per centum compound interest, and unless otherwise agreed in writing shall be paid in one sum to the executors or administrators of such beneficiary.

The sums payable under the foregoing options are based upon an assumed interest earning of three per centum, but if in any year the Company shall declare for that year upon funds held by it under such options a greater interest rate than three per centum, the sum then payable under Option 2, or under Option 3 within the fixed period of twenty years, shall be increased accordingly.

After approval of proofs of the death of the Insured, and upon surrender of the Policy, the Company shall make and deliver to each beneficiary a certificate evidencing his rights and benefits under the option selected.

Instalment options are not applicable to a Policy which is payable to a corporation or co-partnership nor to policies under which the net sum payable is less than one thousand dollars.

INSTALMENT TABLES.

Instalment payments under Options 2 and 3 specified in Section 6 on the third page of this Policy, may be made annually, semi-annually, quarterly or monthly; the minimum basis of such payments will be $50 when paid annually, $25 when paid semi-annually, $15 when paid quarterly, or $10 when paid monthly, and the total of the fractional payments each year shall equal the annual payment each year as shown in the following tables, which are based upon a Policy, the proceeds of which are $1,000. The figures contained in the table will apply pro rata to this Policy.

OPTION 2.

Number of Annual Instalments.	3	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
Amount of each Annual Instalment	$ 507.39	$ 345.23	$ 261.19	$ 211.99	$ 179.22	$ 155.81	$ 138.30	$ 124.69	$ 113.81	$ 104.92	$ 97.53	$ 91.29	$ 85.94	$ 81.32	$ 77.29	$ 73.74	$ 70.59	$ 67.78	$ 65.25	$ 62.98	$ 60.91	$ 59.04	$ 57.32	$ 55.75

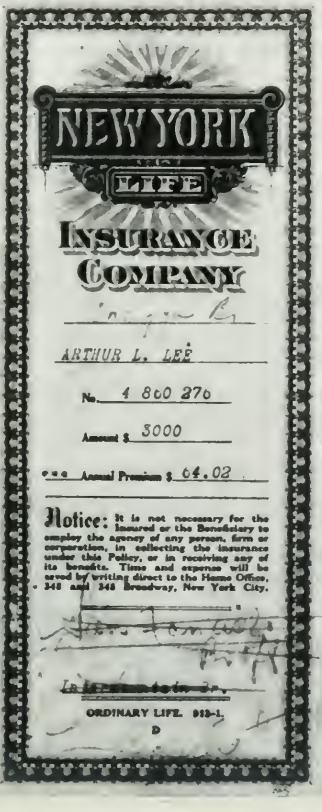
OPTION 3.

Age of Beneficiary at death of Insured	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Amount of each Annual Instalment	$42.48	$40.17	$39.38	$39.06	$38.93	$38.91	$38.96	$39.05	$39.19	$39.35	$39.52	$39.70	$39.88	$40.08	$40.28	$40.49	$40.71	$40.94	$41.18
Age of Beneficiary at death of Insured	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
Amount of each Annual Instalment	$41.42	$41.68	$41.95	$42.24	$42.53	$42.84	$43.16	$43.49	$43.84	$44.20	$44.58	$44.95	$45.39	$45.82	$46.27	$46.73	$47.22	$47.73	$48.23
Age of Beneficiary at death of Insured	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56
Amount of each Annual Instalment	$48.79	$49.36	$49.94	$50.54	$51.17	$51.80	$52.45	$53.12	$53.80	$54.49	$55.19	$55.89	$56.60	$57.29	$57.98	$58.66	$59.32	$59.96	$60.58
Age of Beneficiary at death of Insured	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73 and over		
Amount of each Annual Instalment	$61.16	$61.72	$62.23	$62.71	$63.15	$63.54	$63.89	$64.20	$64.45	$64.67	$64.85	$64.98	$65.09	$65.16	$65.21	$65.23	$65.25		

REGISTER OF CHANGE OF BENEFICIARY

NOTE.—No change, designation, or declaration shall take effect until endorsed on this Policy by the Company at the Home Office.

DATE ENDORSED	BENEFICIARY	ENDORSED BY
Apr. 16, 1917.	Mrs. Irene H. Lee.	
Jan. 21, 1925. SEPTEMBER 22,1926	Mutter, D. Lee, Father FLORENCE LEE, WIFE, OR IN THE EVENT OF HER DEATH TO MUTTER H. LEE, FATHER.	
May 27, 1932	Reetha M. Shelley, friend.	
June 7, 1937	Isabelle Clark, friend, or in event of her	



Liens to be released as of 12-6-44
NEW YORK LIFE INSURANCE COMPANY
by
Presented

PLAINTIFF'S
DEFENDANT'S
EXHIBIT
Case No.
IRA O. HOLCOMB
Reporter

DEFENDANTS' EXHIBIT No. 5

New York Life Insurance Company
Oregon Branch Office
American Bank Bldg., 621 S.W. Morrison St.
Portland 5, Oregon

March 5, 1951.

File O.
Registered Mail.

Mr. Arthur L. Lee,
2241 N.W. Hoyt Street,
Portland, Oregon.

Policy No. 4 860 276.

Dear Mr. Lee:

Please find herewith your policy numbered above and the photostatic copy of the Decree No. 110,283.

The Home Office has instructed us to advise you that this Divorce Decree does not dispose of the policy and that under the circumstances we should advise you that no transaction under this policy will be permitted without the consent of Florence Lee, former wife or until such time as the Company is furnished with a release from her, releasing all her interest and claims in the policy.

We have also been instructed to inform you that a photostatic copy of this Decree has been retained in our files at the Home Office.

The policy has had no endorsement made on it.

Sincerely yours,
/s/ R. H. ORTH.
For Cashier.

DEFENDANTS' EXHIBIT No. 6

New York Life Insurance Company
Oregon Branch Office
American Bank Bldg., 621 S.W. Morrison St.
Portland 5, Oregon

December 18, 1952.

File K.

Mr. Arthur L. Lee,
2241 N.W. Hoyt St.,
Portland, Oregon.

Policy No. 4 860 276.

Dear Mr. Lee:

We quote below a letter just received from our Home Office:

"Our Office of General Counsel has advised that when you write to this insured you should inform him that we do not deny him his right under the policy to surrender it in accordance with its terms and conditions, but we will not be able to pay the cash surrender value to him alone without the consent of Florence Grusenmeyer, in view of her claim. With this consent Mrs. Grusenmeyer should furnish

us with a statement certifying that she and Florence Lee are one and the same person.

"Premiums for this policy are paid to November 6, 1952, and the cash value quoted below will be available until February 6, 1953, provided no further premiums are paid.

"If this cash value is desired while available, we will require the return of the policy and the attached request for cash value signed by the Insured and consented to by Florence Grusenmeyer with the agreement that it will be in order for us to surrender this policy for its cash value and issue our check to his order.

"Cash Value	$1,512.00
"Surrender Allowance	72.00
"Divs. at Interest	108.30
"1952 Dividend	18.93
"Total Cash Calue.....	$1,711.23"

On receipt of the above requirements we will be pleased to refer them to our Home Office.

Yours sincerely,
/s/ W. P. KRUEGER,
For Cashier.

DEFENDANTS' EXHIBIT No. 7

New York Life Insurance Company
Portland Branch Office
American Bank Bldg., 621 S.W. Morrison St.
Portland 5, Ore.

Jan. 13, 1953.

Mr. Arthur L. Lee,
2241 N.W. Hoyt Street,
Portland, Oregon.

Policy No. 4 860 276.

Dear Mr. Lee:

Please refer to our letter of December 18th. We have not received a reply and we wish to call your attention to the second paragraph in which the Home Office advises that the cash value quoted would be available until February 6, 1953, providing no further premiums are paid.

We trust that you are giving this matter your attention so that the requirements called for may be furnished before that time.

Yours sincerely,
/s/ W. P. KRUEGER,
For Cashier.

DEFENDANTS' EXHIBIT No. 8

Portland Branch

New York Life Insurance Company
51 Madison Avenue, New York 10, N. Y.

Actuarial Department

June 5, 1953.

Mr. Arthur L. Lee,
2241 N.W. Hoyt Street,
Portland, Oregon.

Policy Number: 4 860 276.
Due date of premium in default: Nov. 6, 1952.
Temporary (or Extended Term) Insurance:
Amount: $3,000.
Expiry Date: Aug. 25, 1971.

Dear Mr. Lee:

Default in payment of premium having occurred under the above-numbered policy, notice is hereby given that insurance has been continued automatically thereunder as Temporary (or Extended Term) Insurance as stated above, all subject to the terms and conditions of the policy.

The Company will be pleased to consider reinstatement of the policy upon receipt of proper requirements and suggests that you complete and return the attached stub.

Very truly yours,
/s/ WM. MAC FARLANE,
Vice-President and Chief
Actuary.

DEFENDANTS' EXHIBIT No. 9

Richard C. O'Connor
Attorney at Law
Inheritance Tax Appraiser
San Francisco 3, Cal.

October 28, 1953.

Messrs. Davis, Jensen & Martin,
Attorneys at Law,
United States National Bank Bldg.,
Portland 4, Oregon.

Attention: Donald W. McEwen.
Re: New York Life vs. Lee, et al.

Gentlemen:

Thank you for Mr. McEwen's letter of October 23, 1953. My client, however, is financially unable to appear or for me to appear for the pre-trial conference, or, indeed, for the trial itself. She is therefore prepared to await whatever judgment the Court sees fit to enter, feeling that the evidence which Mr. Lee presents will in itself establish the justice of her claim.

I am sending a copy of this to Mr. Bollenback and, of course, you are both free to reveal its contents to the Court.

Very truly yours,
RICHARD C. O'CONNOR.

RCO'C:HC.
cc: C. X. Bollenback.

DEFENDANTS' EXHIBIT No. 10

Civil Form 34.

No. 110-283

In the Superior Court of the State of California in and for the County of Los Angeles

No. D 34430, Dept. 3

FLORENCE TRAVERS,

Plaintiff,

vs.

FRANK E. TRAVERS,

Defendant.

FINAL JUDGMENT OF DIVORCE

In this cause an interlocutory judgment was entered on the 3rd day of August, 1925, adjudging that plaintiff was entitled to a divorce from defendant, and more than one year having elapsed, and no appeal having been taken from said judgment, and no motion for a new trial having been made, and the action not having been dismissed;

Now, on motion of plaintiff, it is adjudged that plaintiff be and is granted a final judgment of divorce from defendant and that the bonds of matrimony between plaintiff and defendant be, and the same are, dissolved.

It is further ordered and decreed that wherein said interlocutory decree makes any provision for alimony or the custody and support of children, said provision be and the same is hereby made

binding on the parties affected thereby the same as if herein set forth in full, and that wherein said interlocutory decree relates to the property of the parties hereto, said property be and the same is hereby assigned in accordance with the terms thereof to the parties therein declared to be entitled thereto.

Done in open Court this 1st day of September, 1926.

ALBERT LEE STEPHENS,
Presiding Judge.

Entered in Book 618, Page 209.

No. 16424

Filed: Sept. 1, 1926.

Entered: Sept. 3, 1926.

State of Oregon,
County of Multnomah—ss.

I, Si Cohn, County Clerk and Ex Officio Clerk of the Circuit Court of the State of Oregon for the County of Multnomah, a Court of Record, Do Hereby Certify That the Foregoing Copy of Final Judgment of Divorce—Florence Travers, Plaintiff, vs. Frank E. Travers, Defendant. No. 110-283, D 34430, Has Been Compared by Me With the Original and That It Is a Correct Transcript Therefrom, and of the Whole of Such Original Final Judgment of Divorce as the Same Appears on File in My Office and in My Custody.

In Testimony Whereof, I have Hereunto Set My

Hand and Affixed the Seal of Said Court, This 28th Day of Sept., A.D. 1954.

SI COHN,
County Clerk.

By /s/ B. STOKES,
Deputy.

In the United States District Court
for the District of Oregon

United States of America,
District of Oregon—ss.

CERTIFICATE OF CLERK

I, F. L. Buck, Acting Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint for interpleader; Answer of defendant, Arthur L. Lee; Answer of Florence Grusenmeyer; Pre-trial order on issue of interpleader; Memorandum of Judge Claude McColloch; Findings of fact and conclusions of law; Judgment; Notice of appeal; Undertaking for payment of costs on appeal; Designation of contents of record on appeal; Order to forward exhibits to Court of Appeals and Transcript of docket entries constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 7070, in which New York Life Insurance Company, a corporation, is the plaintiff and appellant and Arthur L. Lee, Florence Grusenmeyer, formerly Florence Lee, and Isabel Clark are defendants and appellees; that the said

record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that the cost of filing the notice of appeal is $5.00, and that the same has been paid by the appellant.

I further certify that there is also enclosed herewith Exhibits 1 to 3, inc., 3-A; 3-B; and 4 to 10, inc., together with Transcript of Proceedings of September 30, 1954.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 17th day of January, 1955.

[Seal] /s/ F. L. BUCK,
Acting Clerk.

[Endorsed]: No. 14624. United States Court of Appeals for the Ninth Circuit. New York Life Insurance Company, a Corporation, Appellant, vs. Arthur L. Lee and Florence Grusenmeyer, Formerly Florence Lee, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed January 18, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14624

NEW YORK LIFE INSURANCE COMPANY,
Appellant,

vs.

ARTHUR L. LEE, FLORENCE GRUSENMEYER, Formerly FLORENCE LEE, and ISABEL CLARK,
Appellees.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Comes now the New York Life Insurance Company, appellant above named, and for a statement of points on which it intends to rely on this appeal, says:

1. The District Court erred in finding and holding that the action instituted by appellant in interpleader could not be maintained.

2. The District Court erred in dismissing appellant's action in interpleader.

3. The District Court erred in failing to find and hold that there were two adverse claimants claiming

the funds deposited into the registry of the District Court by appellant.

4. The District Court erred in failing to make an order of interpleader requiring the defendants, Arthur L. Lee and Florence Grusenmeyer, to interplead their respective claims to the funds deposited in the registry of the District Court by appellant, and that plaintiff be discharged from all liability.

5. The District Court erred in finding and holding that the action in interpleader could not be maintained upon the ground that if the relief of interpleader was granted the defendant, Arthur L. Lee, would be deprived of attorneys' fees in an action pending in the Circuit Court of the State of Oregon for the County of Multnomah.

DAVIS, JENSEN &
MARTIN, and

DONALD W. McEWEN,

By /s/ DONALD W. McEWEN,
Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 21, 1955.